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APPLICATION OF THE RULE AGAINST PERPETUITIES TO OPTIONS TO PURCHASE. — According to the most satisfactory statement of the rule against perpetuities, no interest subject to a condition precedent is good unless the condition must be fulfilled, if at all, within twenty-one years after some life in being at the creation of the interest.[1] Consequently, the English courts have held that a covenant by a landowner giving the covenantee the option of purchasing his land at any future time is void as creating a perpetuity,[2] and the Chancery Division has recently decided that a covenant in a lease for ninety-nine years that the lessee may purchase the fee at any time during the term is obnoxious to the rule. *Woodall* v. *Clifton*, 39 Law Jour. 644.

It may be objected that these results are opposed on principle to the well-established English doctrine which exempts covenants for perpetual renewal in leases from the operation of the rule against perpetuities.[3] Of the many suggestions which have been advanced to explain this exemption,[4] the most noteworthy is that the covenant is part of the lessee's present interest, and the right of a present possessor of land to continue or drop his interest is not a right subject to a condition precedent.[5] This explanation, however, while sufficient in the case of an absolute covenant to renew, is not equally satisfactory when the right to renewal is limited to arise only upon giving notice within a particular time and paying a specified fine.[6] Such stipula-

[1] Gray, Rule against Perpetuities § 201.
[2] London, etc., Railway *v.* Gomm, 20 Ch. D. 562.
[3] Hare *v.* Burges, 4 Kay and J. 45.
[4] See 13 HARV. L. REV. 472, 482.
[5] Gray, Rule against Perpetuities § 230.
[6] 42 Sol. Jour. 628.

tions, as well as other requirements establishing conditions precedent to the right of the covenantee, are common and are held not to invalidate the covenants.[7] On the whole, it would seem that the doctrine of exempting covenants for perpetual renewal from the application of the rule against perpetuities must be regarded as a pure exception.[8] Indeed, some American courts have refused to recognize it.[9] It is impossible, therefore, to argue from this exceptional doctrine as a basis. A covenant to convey a fee at a remote time clearly creates an interest in land. That interest is subject, however, to the condition that the covenantee shall elect to take a conveyance of the fee; and if the covenant permits the condition to be fulfilled at too remote a time, the rule against perpetuities is infringed. It is well settled that to be valid an executory interest in a legal estate created by means of a shifting or springing use must be so limited that it must necessarily take effect, if at all, within the period required by the rule.[10] In the case of the covenant to convey there is a springing limitation of the equitable estate, since upon the election of the covenantee to purchase, the equitable estate passes from the covenantor and vests in him; and if such a limitation of the legal estate by way of springing or shifting use is void, it is hard to escape the conclusion that the same must be true in the case of the equitable estate. In other words, there is no difference, for the purposes which the rule against perpetuities is designed to accomplish, between an option to purchase and what is called a conditional limitation; and both must take effect within the time required by that rule.

RIGHTS RESULTING FROM ADVERSE POSSESSION OF ONE CLAIMING LESS THAN THE FEE. — An adverse possessor usually claims the fee; but in some cases he admits the title of a third party, while disputing that of the real owner. In such cases the question arises as to whether he acquires title for himself against all the world by virtue of a possession adverse to the true owner. It is settled in cases where one enters as life tenant under a void will and remains for the statutory period that the true owner is barred, but that the life tenant and his privies cannot dispute the title in fee simple of the remainder man under the will.[1] The same rule holds in the case of one who enters as life tenant under a deed from a grantor who has no title.[2] An interesting extension of the doctrine to be deduced from these cases is suggested by a case decided a short time ago in Minnesota. The defendant entered the plaintiff's land thinking that it belonged to the United States and meaning to acquire a homestead. He remained in possession longer than the statutory period, when the plaintiff attempted to eject him. The court held that the plaintiff was barred, and intimated that the defendant had acquired the fee. *Maas* v. *Burdetzke*, 101 N. W. Rep. 182.

Two theories have been advanced to explain these cases. One is that the adverse possessor is estopped from denying the title of the one under whom he has been claiming. The other is that the adverse possessor is

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[7] See Finch *v.* Underwood, 2 Ch. D. 310; Sweet *v.* Anderson, 2 Bro. P. C. 256.
[8] See London, etc., Railway *v.* Gomm, *supra.*
[9] Morrison *v.* Rossignol, 5 Cal. 64.
[10] Sug. Gilb. Uses, 3rd ed., 156, 157.

[1] Board *v.* Board, L. R. 9 Q. B. 48.
[2] Dalton *v.* Fitzgerald, [1897] 1 Ch. 440.